

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ALYSSIA MIGLIACCIO,

Plaintiff,

vs.

**PALMETTO MIDWEST
FITNESS, INC., d/b/a
LIGHTHOUSE FITNESS
MANAGEMENT a/k/a
CUSTOM BUILT
PERSONAL TRAINING, a
foreign for profit business
corporation,**

Defendants.

Case No. CIV-17-876-D

PLAINTIFF'S RESPONSE TO MOTION TO DISMISS

Plaintiff, Alyssia Migliaccio, files this response to the motion to dismiss filed by Palmetto Midwest Fitness, Inc. and submits the following:

1. Plaintiff filed a lawsuit against Defendant on July 17, 2017, in Oklahoma County, Oklahoma. (Doc. 1-3, Plaintiff's Petition).
2. Defendant removed the case to federal court on August 15, 2017. (Doc. 1, Notice of Removal).
3. Defendant's filed its responsive pleading on August 21, 2017, as a motion to dismiss for failure to state a claim. (Doc. 6)

4. Pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), Plaintiff amended her complaint as a matter of course to address the alleged deficiencies in her original pleading.¹ (Doc. 8, Amended Complaint).
5. As reflected in the 2009 comments to Federal Rule of Civil Procedure 15, amendment to the original pleading in response to a motion to dismiss is permitted.
6. Because Plaintiff amended her complaint as a matter of course as, permitted by FED. R. CIV. P. 15(a)(1)(B), the motion to dismiss filed alleging defects in her previous complaint should be rendered moot.

Because Plaintiff's amended complaint rendered the motion to dismiss filed by Defendant moot, Plaintiff requests this Court deny (or strike) the motion to dismiss.

Respectfully submitted,

s/ D. Colby Addison

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¹ Although Plaintiff does not believe the original complaint to be defective, Plaintiff amended the complaint to address all alleged deficiencies to conserve judicial economy.

CERTIFICATE OF MAILING

This is to certify that on September 11, 2017, a true and correct copy of the foregoing instrument was electronically transmitted to the Clerk of Court using the ECF System for filing and transmittal of Notice of Electronic Filing to the following ECF registrants:

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s/D. Colby Addison

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